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CASE & COMMENT

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 12. APRIL, 1906. No. 11

CASE AND COMMENT

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO., Rochester, N. Y.

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Immunity of Corporate Officers and Agents.

A long step was made toward the possibility of enforcing the laws against corporations which have practically defied them when the United States Supreme Court, in its recent decisions, made it impossible for officers of a corporation to refuse to give testimony before a grand jury because it might incriminate the corporation. In the case of Hale *v.* Henkel, Adv. S. U. S. 1905, p. 370, 26 Sup. Ct. Rep. 370, and in the accompanying cases, the court most explicitly held that the privilege against self-incrimination, afforded by the 5th Amendment to the Federal Constitution, is purely personal to the witness, and that he cannot claim the privilege of another person, or of a corporation of which he is an officer or employee. It also held that the constitutional protection against searches and seizures could not, ordinarily at least, justify an officer of a corporation in refusing to produce its books and papers in obedience to a subpœna duces tecum issued in aid of an investigation by a grand jury of alleged violations of law by the corporation. The court also held, following Brown v. Walker, 161 U. S. 591, 40 L. ed. 819, 5 Inters. Com. Rep. 369, 16 Sup. Ct. Rep. 644, that statutory immunity of a witness from prosecution on account of any matter concerning which he testifies under certain Federal statutes is sufficient to satisfy the constitutional guaranty, though it may not afford him immunity from prosecution on such matters in the state court. The violations of the anti-trust law and other Federal laws which have attempted to regulate interstate commerce have for years been, in many instances, not only well-known, but actually defended by the corporations on the ground of necessity. There has thus gone on a continued defiance of the government by the corporations which were the creation of law, but which had become powerful enough to regard themselves as above the law. The humiliating spectacle has done much to demoralize the public, and breed a disrespect for law. A large part of the public seems to have accepted the theory that it was useless to undertake to enforce law against powerful corporations; but the situation has changed rapidly in the past two or three years. Prosecutions have not only been instituted, but have actually been carried to success, against some of the greatest of the mammoth aggregations of capital that were violating the Federal laws. It was proved that what had been supposedly impossible could actually be accomplished. Yet the

difficulties in the way of convicting a gigantic corporation are not easily measured. Every legal, if not every illegal means that unlimited money can employ is used to defeat the proceeding. If, in such a situation, the corporate officers, when called upon for testimony, could make their personal privilege against incrimination broad enough to shield the corporation itself, the task of enforcing the law against such companies might, indeed, be hopeless. But the recent decisions of the Supreme Court have made this impossible, and, in so doing, have done more than any other single decision could probably do to teach the great corporations that they are not greater than the government.

Negligence in Handling "Dead" Wire.

Should an employee be held to the same standard of care and caution in handling an electric wire which he has the right to assume is "dead" that he is bound to exercise in handling what is known to be a "live" wire? A negative answer would seem too obvious to merit discussion but for a recent decision of the Supreme Court of the United States in Looney *v.* Metropolitan R. Co. Adv. S. U. S. 1905, p. 303, 26 Sup. Ct. Rep. 303. The only question involved in this case was the correctness of the ruling of the trial court directing a verdict for defendant at the close of the case made by the plaintiff in an action to recover damages from a street railway company for the death of an employee, called a "pitman," occasioned by an electric shock received while adjusting the "leads" connecting the motive power of the car with the overhead current. The negligence relied upon to establish the company's liability was the act of the conductor of the car in permitting the trolley pole to come in contact with the trolley wire while the "pitman" was at work. Waiving any question as to the application of the "fellow-servant rule," and conceding that the conductor was negligent, the Supreme Court, speaking through Mr. Justice McKenna, upholds the action of the trial court on the ground that one of two things was necessary to cause the accident,—a leak in the insulation, as to which there was no evidence, or the act of the "pitman" in unnecessarily touching the uninsulated ends of the "leads" in making the connection.

But, if it was negligence for the conductor to complete the circuit, why should the "pitman" be held, as a matter of law, guilty of contributory negligence which exonerates the company from liability because he failed to anticipate such negligence? Is there not here, at least, a question for the jury? Other courts have so held in cases presenting somewhat similar facts. Thus, where an employee received an electric shock while using his unprotected hands in connecting wires with the circuit after removing a street lamp, it was held, in Colorado Electric Co. *v.* Lubbers, 11 Colo. 505, 7 Am. St. Rep. 255, 19 Pac. 479, that the question of his contributory negligence was for the jury to decide, there being evidence that the accident would not have happened had the current not been turned on earlier than usual. So, where an employee was killed while splicing wires, by a current sent through the wires in testing a dynamo after installing an armature which had been removed for repairs, the question of his contributory negligence was held to be one for the jury, where he did not know that the armature had then been repaired and installed. Williams *v.* North Wisconsin Lumber Co. 124 Wis. 328, 102 N. W. 589. So, too, it was held in Harroun *v.* Brush Electric Light Co. 12 App. Div. 126, 42 N. Y. Supp. 716, that the jury could properly find that the failure of a lamp trimmer to use rubber gloves in trimming an arc lamp in the daytime on a supposed "dead" wire was not negligence contributing to his death from a shock due to a crossed wire, where the evidence showed that it was only customary to wear such gloves in trimming a lamp at night on a "live" wire, and that it would have been impossible for him to have performed the amount of work required if he used such gloves. And the finding of the jury that an experienced lineman, injured by coming in contact with two high-voltage wires, improperly placed within a few inches of each other on the same side of the pole, was not guilty of contributory negligence, was held, in General Electric Co. *v.* Murray, 32 Tex. Civ. App. 226, 74 S. W. 50, to be sustained by evidence that he had no knowledge that

the wires were "live" ones, although he knew that the current was to be turned on as soon as certain repairs, then in progress, were completed, and testified that he might have escaped injury by treating the wires as "live" ones; stating that it was good practice to take this course with all wires unless they were positively known not to be carrying a current, and that such was the general custom among linemen.

Of course, where the danger was obvious, a neglect to take the ordinary precautions against a shock defeats any recovery. Junior *v.* Missouri Electric Light & P. Co. 127 Mo. 79, 29 S. W. 988; Smart *v.* Louisiana Electric Light Co. 47 La. Ann. 869, 17 So. 346; Piedmont Electric Illuminating Co. *v.* Patteson, 84 Va. 747, 6 S. E. 4; Hart *v.* Allegheny County Light Co. 201 Pa. 234, 50 Atl. 1010; Law *v.* Central Dist. Printing & Teleg. Co. 140 Fed. 558. And there are cases holding that an experienced lineman employed by a telephone company, who receives a shock because of the "live" condition of a guy or span wire belonging to a street railway company, which would have been "dead" but for a defect in the insulator or circuit breaker, is chargeable with negligence which will defeat his right to recover any damages from the telephone company, where he failed to make any insulation test, although he had apparatus for the purpose, and knew that defects in the insulation of such guy or span wires were common, and that there was no one besides the lineman to make such test. Bergin *v.* Southern New England Teleph. Co. 70 Conn. 54, 39 L. R. A. 192, 38 Atl. 888; Anderson *v.* Inland Teleph. & Teleg. Co. 19 Wash. 575, 41 L. R. A. 410, 53 Pac. 657. The controlling factor in both these cases is that the conditions were such that the employees must have known the danger of acting on the assumption that the guy wires were "dead," and neither these cases, nor those cited as illustrations of obvious dangers, lend support to any such extraordinary doctrine of contributory negligence as that announced in this decision of the Supreme Court of the United States.

Local Option in Cities.

A bill to give residence districts in cities the right to local option with respect to licensing saloons or other places where intoxicating liquors are sold has caused lively interest in the state of New York. Opposition to it has been strong enough to prevent it, so far, from being passed. The strange feature of this matter is that such a bill has not already been passed in every state. Nothing can be more utterly unreasonable than to deny to smaller divisions of the city the same privilege of local option that is given to rural districts; and it is little less than an absolute certainty that in the near future such laws will be enacted. Without such local option, the inhabitants of a district, who have built or bought homes of high grade, where everything is attractive and beautiful, may be compelled to submit to the introduction of a saloon where it will be an eyesore and an offense to the whole neighborhood.

Such a situation is admirably described in an opinion of the Indiana supreme court, by McCabe, J., in Haggart *v.* Stehlin, 137 Ind. 43, 22 L. R. A. 577, 35 N. E. 997, in the following language: "It is no mere fanciful notion, dictated by dainty modes and habits of living, that makes one who has located his home in a quiet, peaceful part of a city, in the immediate neighborhood of numerous churches, Sunday schools, common schools, female colleges, and among neighbors who are attendants upon such places, and out of the reach of the busier haunts of the business part of the city, protest and object to the maintenance of a saloon on the adjoining lot, and within 10 feet of such residence, where drinking people are invited to, and do, assemble to drink intoxicating liquors, with all the incidents usually attendant upon such a place; very few people, indeed, who would not object and protest and be seriously annoyed thereat. Even the man who frequents such a place to drink would, as a general thing, object to the traffic obtruding itself within 10 feet of his threshold."

In that case the court held that a saloon was a nuisance, against which an injunction could be had.

Most men who have respectable homes, even if they may sometimes patronize a saloon, will vigorously protest against having one located next door, or facing their home across the street. So long as it is

a matter for the majority in any district to decide, sufficient accommodations will be afforded for bibulous citizens without much doubt. It is certain that the majority of citizens do not wish to live very near a saloon, and now that the question has been fairly raised, and the agitation fairly begun, for local option in cities, there can be little doubt that at no distant day the citizens of our cities will compel the passage of laws that will enable them to protect their residence districts from invasion by saloons against the wish of the residents.

When it is Noon.

The introduction of standard time by the railroads has resulted in bringing it into general use in most parts of the country for all affairs of business and of society. It is probable that, in most cities at least, the schools, the churches, and the courts, as well as all other organizations, use standard time. It has become so common that most people have nearly forgotten that any other time can be intended. Yet a recent Kentucky case reminds us that legal controversies may still arise with respect to that question. In Rochester German Ins. Co. *v.* Peaslee-Gaulbert Co. 27 Ky. L. Rep. 1155, 1 L. R. A. (N. S.) 364, 87 S. W. 1115, the question arose as to the exact moment of the termination of an insurance policy which stipulated for insuring the property for a period ending on a certain day "at noon." The fire started at 11:45 A. M. standard time, or at 12:02½ P. M. sun time. If the policy was to be measured by standard time it was in force when the fire began, but if it were measured by sun time it had expired. The determination of the case was held to depend upon the existence of a custom of the locality to use standard time instead of sun time. It was held to be a question for the jury whether there was such a custom prevailing as to make it proper to presume that the contract was made with reference to it. The jury found the existence of the custom by which standard time was adopted.

In a similar case in Iowa, Jones *v.* German Ins. Co. 110 Iowa, 75, 46 L. R. A. 860, 81 N. W. 188, substantially the same rules of law were adopted by the court, and the case was left to the jury; but in that case the jury found against the alleged custom to use standard time. But in Georgia it has been held, as matter of law, that the only standard of time recognized by the law of that state is sun time, for which people engaged in a certain line of business, or the people of a certain locality, cannot substitute any other standard. Henderson *v.* Reynolds, 84 Ga. 159, 7 L. R. A. 327, 10 S. E. 734. And in Texas this doctrine was also adopted in *Ex parte* Parker, 35 Tex. Crim. Rep. 12, 29 S. W. 480, 790. But, in substantial accord with the Iowa and Kentucky cases, it was held in Nebraska that, unless there was something to show that a different mode of measuring time has been in general use, the common time is intended; and therefore, if a summons is to be returned at a certain hour standard time, it should so state. The diversion in the decisions make it clear that the question is still an open one in jurisdictions where it has not been decided, unless standard time has been recognized by legislation. But it seems reasonable for the courts to recognize the existence of a general custom of the community to use standard time, where such custom exists. It is certain that when most people, in many parts of the country at least, make an agreement or appointment to be fulfilled at a certain hour, they have in mind the time which they are constantly using for all purposes. It is inevitable that, when innumerable people have to keep watches and clocks set by standard time because they must use that time to get an electric car, a suburban railroad train, an elevated train, a subway, a ferry, or some other public conveyance, which runs on standard time, and which they must every day take to get to and from their place of business, the result will be that in the localities where they live standard time will become the only time that is practically recognized. It is undeniable that when, in such a community, people make an appointment for a certain hour, or a contract extending from or to a certain hour, they are thinking of that hour as shown by their time pieces, and these are set by standard time. In construing contracts, at least where the

intent of the parties is to be determined, it seems clearly reasonable to hold that the existence of a custom to use standard time should be determined as a question of fact; but it would save trouble if the legislatures would adopt standard time by statute.

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Among the New Decisions.

Appeal.

The dismissal of an appeal for failure to comply with a mandatory statute as to payment of the register's fee for his return is held, in Lohrstorfer *v.* Lohrstorfer (Mich.) 70 L. R. A. 621, to confer a vested right which cannot be impaired by a subsequent statute permitting the reinstatement of appeals within a specified time upon proof that the fee has been paid in the interim.

Banks.

Under the decision in First Nat. Bank *v.* Converse, Adv. S. U. S. 1906, p. 306, the want of authority of a national bank to subscribe for capital stock in a speculative enterprise is a valid defense to an action against the bank to enforce its statutory liability as a stockholder.

A bank which sends to another bank, which is its regular correspondent, for collection, a draft indorsed for collection and credit is held, in Garrison *v.* Union Trust

Co. (Mich.) 70 L. R. A. 615, to have no right to assert its title against the lien upon the proceeds to which a third bank, to which the draft is forwarded for collection, is entitled in the ordinary course of business to balance its account against the intermediate bank.

Carriers.

The interstate commerce act is so construed in Southern P. Co. *v.* Interstate Commerce Commission, Adv. S. U. S. 1906, p. 330, as not to forbid the reservation by common carriers of the right of routing beyond their own terminals as a condition of guaranteeing a through rate, where such action has served, as was intended, to break up rebating by the connecting lines, and in practice the actual routing is generally conceded to the shipper.

A passenger on a tram car, who refused, when he paid his fare, to accept the ticket tendered by the conductor on account of a condition printed on the back of it, with the result that the ticket fell on the floor of the top of the tram car, and was lying there afterward, and was pointed out by him when an inspector asked him for his ticket, though he refused to take it up or pay another fare, was held not to be guilty of an offense under a by-law which required passengers to show their tickets when requested to do so, or, on failure to produce the ticket, to pay fare. Wilson *v.* Fearnley [1905] K. B. Div. 92 Law Times Rep. 647.

The refusal of the agent at the intermediate terminal to indorse a return-trip ticket, which indorsement, according to the terms of the ticket, is necessary to validate it, is held, in Texas & P. R. Co. *v.* Payne (Tex.) 70 L. R. A. 946, not to be a final breach of its contract, by the carrier, so as to preclude recovery by the passenger of any damages that may subsequently accrue; and, where the passenger is ejected from the train when attempting to use the ticket, under circumstances of humiliation, it is held that he may recover damages therefor.

That it is not negligence, as matter of law, for a passenger who is upon a train so crowded that he cannot find a seat, and becomes sick because of lack of proper ventilation, and tobacco smoke, to seek relief upon a platform when unable to reach a window, is declared in Morgan *v.* Lake Shore & M. S. R. Co. (Mich.) 70 L. R. A. 609.

The right of a blind person to transportation upon a railroad upon tender of fare, without an attendant, is upheld in Illinois C. R. Co. *v.* Smith (Miss.) 70 L. R. A. 642, if, as matter of fact, he is competent to travel alone without requiring other care than that which the law requires the carrier to bestow upon all its passengers alike.

Christian Science.

See CONSTITUTIONAL LAW.

Commerce.

A state tax upon the local business of a foreign meat-packing house was held, in Armour Packing Co. *v.* Lacy, Adv. S. U. S. 1906, p. 232, not to be invalid as an interference with interstate commerce.

Constitutional Law.

Subject to the qualification that the expense of the removal of the soil attendant upon the widening and deepening of a creek across a railroad right of way to subserve the drainage of low lands cannot be cast upon the railroad company without denying it due process of law, the Federal Supreme Court held, in Chicago, B. & Q. R. Co. *v.* Illinois, Adv. S. U. S. 1906, p. 341, that the company could be required to stand the entire expense of removing and rebuilding its culvert made necessary by the improvement.

Requiring the substitution of water-closets for school sinks in tenement houses is held, in Tenement House Department *v.* Moeschen (N. Y.) 70 L. R. A. 704, to be a proper exercise of the police power.

A statute requiring every member of a firm engaged in the plumbing business to be a registered plumber, whether his duties require him to have a knowledge of that

trade or not, is held, in Schnaier *v.* Navarre Hotel & I. Co. (N. Y.) 70 L. R. A. 722, to be an unconstitutional interference with liberty and property.

A statute requiring vaccination as a prerequisite to attendance at public schools is held, in Viemeister *v.* White (N. Y.) 70 L. R. A. 796, to be a reasonable and proper exercise of the police power.

A statute making it a misdemeanor to give Christian Science treatment for a fee is held, in State *v.* Marble (Ohio) 70 L. R. A. 835, not to be an interference with the rights of conscience and of worship.

Contempt.

The right of a court, in an action for divorce, to punish a contempt in refusing to pay alimony by striking the defendant's answer from the record, or refusing to permit him to plead further, in a case where he has voluntarily absented himself from the territory for the purpose of avoiding contempt proceedings for failure to pay such alimony, is sustained in Bennett *v.* Bennett (Okla.) 70 L. R. A. 864.

Contracts.

See also EQUITY.

An agreement by an applicant for admission to an old folks' home to deliver to it all property which he may subsequently become the owner of, in consideration of maintenance during life, is held, in Baltimore Humane Soc. *v.* Pierce (Md.) 70 L. R. A. 485, to be void as against public policy.

A contract by which a railroad company gives to a sleeping car company the exclusive right to run its cars upon the railroad for a term of years is held, in Ft. Worth & D. C. R. Co. *v.* State (Tex.) 70 L. R. A. 950, not to create any restrictions in the free pursuit of a business authorized by law, within the meaning of an anti-trust act, since sleeping car companies in general have no right to demand that their cars shall be run upon the railroad.

Corporations.

See also LIMITATION OF ACTIONS.

A foreign corporation doing business in the state is held, in Boyer *v.* Northern P. R. Co. (Idaho) 70 L. R. A. 691, not to acquire a fixed residence in the state for the purpose of suing and being sued by designating an agent upon whom process may be served as required by the provisions of a state statute.

Requiring a foreign corporation to pay a license fee as a condition precedent to the right to do business in the state, or subject itself to penalties supposed to be prescribed by a statute, is held, in C. & J. Michel Brewing Co. *v.* State (S. D.) 70 L. R. A. 911, not to be such compulsion as will entitle it to recover the amounts paid in case the statute is adjudged to be unconstitutional.

Courts.

A magistrate invested with general jurisdiction over the subject-matter of an alleged offense is held in Rush *v.* Buckley (Me.) 70 L. R. A. 464, not to be liable to a civil action for erroneously deciding, in good faith, that he has jurisdiction over a particular offense of which complaint is made to him, and issuing a warrant for the arrest of accused, although the ordinance under which the proceeding was taken proves to be without effect.

Covenants.

A modern apartment house is held, in Kitching *v.* Brown (N. Y.) 70 L. R. A. 742, not to be within a covenant against the erection upon certain premises of a tenement house, which was made at a time when that term referred to the habitations of the very poor, and was associated in the contract with other things that were obviously noxious, noisome, or deleterious.

Eminent Domain.

Condemnation proceedings, in the Utah courts, of the right of way across a placer

mining claim for the aerial bucket line of a mining corporation, were sustained in Strickley *v.* Highland Boy Gold Min. Co. Adv. S. U. S. 1906, p. 301, as against the contention that the proceedings amounted to a taking of private property for private use.

The reclamation of wet or marsh lands of the state for agricultural purposes by drainage is held, in Sisson *v.* Buena Vista County (Iowa) 70 L. R. A. 440, to be a public use, for which the power of eminent domain may be exercised.

The mere creation and distribution of power for manufacturing enterprises is held, in Brown *v.* Gerald (Me.) 70 L. R. A. 472, not to be a public use which will justify an exercise of the power of eminent domain.

The acquisition of a mere private way is held, in Arnsperger *v.* Crawford (Md.) 70 L. R. A. 497, not to be a purpose for which the right to exercise the power of eminent domain may be delegated, although the way is intended to connect a private estate with the public highway.

Equity.

The dismissal of a bill filed on behalf of the United States for the wrongful cutting, carrying away, and conversion of timber from the public domain was affirmed in United States *v.* Bitter Root Development Co. Adv. S. U. S. 1906, p. 318, on the ground that complainant had an adequate remedy at law.

One who, through an agent, conducts a loan office, receiving for loans rates of interest which are so extortionate as to shock the moral sense and be against the public policy of the state, is held, in Woodson *v.* Hopkins (Miss.) 70 L. R. A. 645, not to be entitled to the aid of a court of equity to compel the agent to pay over money received in the business, or to obtain possession of the books, memoranda, and other property pertaining thereto.

Estoppel.

Where one in possession of property under a contract to purchase has taken an assignment from the owner of a right of action for the conversion of gravel thereon, it is held, in Rogers *v.* Portland & B. Street Railway (Me.) 70 L. R. A. 574, that he may be estopped by his own acts from prosecuting the action, where the action is to be for his own benefit because of an agreement that any recovery shall be applied in reduction of his indebtedness to the true owner.

Extradition.

That one cannot be a fugitive from justice, subject to interstate rendition, unless he was in the state from which the demand comes at the time the crime is charged to have been committed, is decided in Farrell *v.* Hawley (Conn.) 70 L. R. A. 686.

Factors.

See MORTGAGE.

Ferry.

A merchant maintaining a store and storehouse on opposite sides of a river, at a point where a ferry is maintained by another person, is held, in Peru *v.* Barrett (Me.) 70 L. R. A. 567, to infringe the ferry license by maintaining row boats, of which he accords his customers free use in the transaction of business with him, where his customers consist of the public generally, and he receives what is a full equivalent for ferriage in the profits of the sales, and his acts clearly diminish the profits of the ferry.

Fixtures.

See LANDLORD AND TENANT.

Food.

An implied warranty of the purity of milk which defendants daily supplied to

plaintiff's household was held to be made. where an account book provided for the plaintiff contained printed statements as to many elaborate precautions taken to secure the purity of the milk. Damages for breach of this warranty were, therefore, held to be recoverable where it was found that plaintiff's wife died of typhoid fever contracted from the milk. Frost *v.* Aylesbury Dairy Co. Ltd., Ct. of App. [1905] 1 K. B. 608, 92 Law Times Rep. 527.

Gas.

See INJUNCTION.

Habeas Corpus.

The reluctance of the Federal courts to release by habeas corpus a person in the custody of the state authorities is exemplified by the decisions of the Supreme Court of the United States in United States *ex rel.* Drury *v.* Lewis, Adv. S. U. S. 1906, p. 229; Carfer *v.* Caldwell, Adv. S. U. S. 1906, p. 264; Felts *v.* Murchy, Adv. S. U. S. 1906, p. 360, and Valentine *v.* Mercer, Adv. S. U. S. 1906, p. 368, in each of which cases such relief was refused.

Highways.

Knowledge of a policeman concerning a defect in a street is held, in Cleveland *v.* Payne (Ohio) 70 L. R. A. 841, not to be such notice to the municipality as to make it responsible for damages resulting from the defect, in the absence of any statute or ordinance charging policemen with the duty of repairing or looking after the streets.

Husband and Wife.

A contract by a married woman, made with her husband, to cook in the lumber woods for a crew of men that had been engaged by her husband to cut a certain quantity of logs for a third person from the land of the latter, who was to furnish the supplies, was held, in Patterson *v.* Bowmaster, 37 New Brunsw. 4, to be a contract for wages in an employment in which the husband had a proprietary interest; and therefore she was denied any lien for wages, where the husband's venture was unsuccessful and left him in debt to the owner of the property for an amount exceeding that of the wife's wages.

Infants.

See NEGLIGENCE.

Injunction.

An injunction against drawing natural gas from a natural reservoir utilized for supplying the inhabitants of a municipal corporation, merely for the purpose of wasting it and injuring those who were utilizing it, is held, in Louisville Gas Co. *v.* Kentucky Heating Co. (Ky.) 70 L. R. A. 558, to be properly granted.

Insurance.

Death caused from dilatation of the heart resulting from a violent exertion in attempting to eject a drunken person from the premises was held not to be an accident in the case of *Re* Arbitration between Scarr and Gen. Ac. Assur. Corp. Ltd. [1905] 1 K. B. 387, 92 Law Times Rep. 128. Because the assured intended to do what he did in exerting physical force, it was held that there was no accident, and the bodily injury was not caused by accidental means within the meaning of an accident insurance policy.

Internal Improvements.

The construction, operation, and maintenance of an oil refinery for the purpose of receiving, manufacturing, storing, and handling crude and refined oil and its by-products, and the marketing of the same, are held, in State *ex rel.* Coleman *v.* Kelly (Kan.) 70 L. R. A. 450, to constitute a "work of internal improvement."

Internal Revenue.

The purchase of documentary stamps, and the affixing of such stamps to manifests of cargoes on foreign bound vessels, were held, in United States *v.* New York & Cuba Mail S. S. Co. Adv. S. U. S. 1906, p. 327, to be of such a voluntary character as to defeat the right to recover the amount paid as wrongfully collected.

Intoxicating Liquors.

A state statute forbidding the bringing of an action for the price of liquors sold in another state, to be resold in violation of the laws of the state where the statute was passed, is held, in Corbin *v.* Houlehan (Me.) 70 L. R. A. 568, not to violate the commerce clause of the Federal Constitution.

Landlord and Tenant.

The act of the lessor of property as a site for a saloon business in preventing the acquisition of a necessary license by protesting against its issuance as owner of other property in the block is held, in Kellogg *v.* Lowe (Wash.) 70 L. R. A. 510, not to effect an eviction.

The fact that a tenant is summarily ejected from a building for nonpayment of rent is held, in Bergh *v.* Herring-Hall-Marvin Safe Co. (C. C. A. 2d C.) 70 L. R. A. 756, not to deprive him of his right to remove his trade fixtures.

Limitation of Actions.

The right of a foreign corporation which has complied with the laws of the state governing such corporations, and which has been regularly and continuously doing business in the state during the entire period required to bar an action, and during all that time has had an agent resident therein upon whom process could be served, to avail itself of the state statute of limitations, is sustained in Colonial & U. S. Mortg. Co. *v.* Northwest Thresher Co. (N. D.) 70 L. R. A. 814.

Mails.

See POSTOFFICE.

Malicious Prosecution.

When the facts upon which probable cause for an arrest depend are in dispute, it is held, in Stoecker *v.* Nathanson (Neb.) 70 L. R. A. 667, that the question of the existence of such cause must be left to the jury for determination under proper instructions by the court.

Maritime Liens.

A claim for money advanced upon the credit of the vessel at the request of the owner, who is without funds in a foreign port, to enable the vessel to load and continue her voyage, is held, in Chamberlain Transp. Co. *v.* Ashland Nat. Bank. (C. C. A. 7th C.) 70 L. R. A. 353, to be a maritime lien.

Master and Servant.

A street car company is held, in Crawford *v.* United Railways & E. Co. (Md.) 70 L. R. A. 489, to be liable for injury to an employee caused by a defect in a car, due to the fact that, according to custom, it was, after inspection, left for several hours of the night in a public street, without any rule or regulation intended to guard it from negligent or wanton injury.

An employee of a railroad company whose duty it is to operate a steam pump, and who is furnished with a railroad tricycle to procure the necessary fuel along the road, who has departed from his employment by going beyond the point where he expected to secure fuel on an errand of his own, is held, in Barmore *v.* Vicksburg S. & P. R. Co. (Miss.) 70 L. R. A. 627, to resume the employment when he begins to return to

that point, so as to render the master liable for his negligent act in running down a pedestrian between the point where he turned about and the point where the fuel was to be obtained.

A mason contractor is held, in Mooney *v.* Beattie (Mass.) 70 L. R. A. 831, to owe no duty to his employees to inspect stone received from the quarry to ascertain if it is free from explosives used to blast it from the quarry bed.

That a railroad company sending employees out in severely cold weather to clean the track in open country, remote from habitations, is under no duty to provide them with food and shelter, or carry to his home an employee whose feet have been frozen, is declared in King *v.* Interstate Consolidated Street R. Co. (R. I.) 70 L. R. A. 924.

The act of a baggage master who has been placed in charge of its waiting room of the railroad company, in assisting in the wrongful arrest of a passenger waiting at the station, is held, in Texas Midland R. Co. *v.* Dean (Tex.) 70 L. R. A. 943, to render the company liable, although the arrest was at the instance of the city authorities, and not on behalf of the railroad company.

Mortgage.

The filing of a chattel mortgage for record is held, in Greer *v.* Newland (Kan.) 70 L. R. A. 554, not to impart constructive notice to a commission merchant to whom the mortgaged property is sent for sale and who sells and pays the proceeds, less his commission, to his consignor.

Municipal Corporations.

The rule that no public body will be held by implication or presumption to have devested itself of its powers was so applied in Knoxville Water Co. *v.* Knoxville, Adv. S. U. S. 1906, p. 224, as to defeat the claim that, by granting a waterworks franchise, exclusive as against "any other person or corporation," a municipality was precluded from constructing its own independent system of waterworks.

The right of a municipal corporation to deprive the owner of a dead animal of his property right in the carcass by giving to public contractors the exclusive right to dispose of it prior to its having become an actual nuisance is denied in Richmond *v.* Caruthers (Va.) 70 L. R. A. 1005.

A municipal ordinance fixing the hours of labor and the minimum rate of wages to be paid to laborers upon a public contract is held, in *Re* Broad (Wash.) 70 L. R. A. 1011, not to interfere with the constitutional guaranty of liberty and property.

Nuisance.

The right to erect stock pens, or other improvements, which in themselves would constitute a nuisance to occupants of neighboring property, is held, in Missouri, K. & T. R. Co. *v.* Mott (Tex.) 70 L. R. A. 579, not to be conferred by a statute giving railroad companies the right to erect on their rights of way all necessary and convenient buildings and stations, fixtures, and machinery, for the accommodation and use of passengers, freight, etc., or which may be necessary for the operation of its railway.

Plumbers.

See CONSTITUTIONAL LAW

Postoffice.

One practising mental healing in good faith and without positive intent to defraud, under the belief that he has the power to effect cures in that manner, is held, in Post *v.* United States (C. C. A. 5th C.) 70 L. R. A. 989, not to be subject to conviction for a fraudulent use of the United States mail in sending circulars and letters through it, and receiving remittances from patrons in response thereto.

Public Lands.

A homestead entry of land, recognized by the Land Office, is held, in Reservation State Bank *v.* Holst (S. D.) 70 L. R. A.

799, to entitle the entry man to possession, and give him a right to all that may be growing on the land, as against one who had acquired prior peaceable possession of the property with an intention of making a homestead entry of it.

Sale of the growing timber by a homestead settler on public land, before he has received his patent, for the purpose of carrying out in good faith the object of the acquisition and enjoyment of the homestead, is held, in King-Ryder Lumber Co. *v.* Scott (Ark.) 70 L. R. A. 873, not to be illegal, even though a benefit should incidentally result to him from the sale.

The right of one in possession of public land under a homestead entry to lease the timber standing thereon for securing the turpentine is sustained in Orrell *v.* Bay Mfg. Co. (Miss.) 70 L. R. A. 881.

Railroads.

An invitation to use a railroad right of way as a footpath is held, in Williamson *v.* Southern R. Co. (Va.) 70 L. R. A. 1007, not to arise from merely permitting such use, where a sign is conspicuously posted warning persons not to do so.

Injury to property near a railroad by the jarring of the earth, by the casting thereon of soot and cinders, and the emission of smoke, physically injuring it, is held in Smith *v.* St. Paul, M. & M. R. Co. (Wash.) 70 L. R. A. 1018, to be within the protection of a constitutional provision requiring compensation for property damaged for public use.

Sales.

A manufacturer who sells goods by sample is held, in Nixa Canning Co. *v.* Lehmann-Higginson Grocer Co. (Kan.) 70 L. R. A. 653, impliedly to warrant that they are free from any latent defect that could not be discovered upon ordinary examination of the sample.

Schools.

See CONSTITUTIONAL LAW.

Street Railways.

See TAXES.

Taxes.

The statutory exemption from state taxation of obligations of the United States was held in Hibernia Sav. & L. Soc. *v.* San Francisco, Adv. S. U. S. 1906, p. 265, not to prevent a state from taxing, in the hands of the owner, United States Treasury checks or orders issued for interest accrued upon registered bonds of the United States and intended for immediate payment.

A legislative grant to an existing street railway company of exemption from taxation for improvement of the streets occupied by its tracks, not based upon any consideration, is held, in Rochester *v.* Rochester R. Co. (N. Y.) 70 L. R. A. 773, to be subject to revocation at the pleasure of the legislature.

Timber.

See PUBLIC LANDS.

Trees.

A gas company which negligently permits gas to escape from its pipes in the highway, so that it destroys shade trees in front of abutting property, is held, in Donahue *v.* Keystone Gas Co. (N. Y.) 70 L. R. A. 761, to be liable for the injury thereby done to such property, although the fee of the street is in the public.

Waters.

The doctrine that what the law authorizes cannot cause an injury which confers a right of action is applied in the case of Rose *v.* City of St. Johns, 37 New Brunsw. 58, where legislative authority to a city for appropriating waters from a lake and its sources, and to erect and maintain dams for the purpose, and lay pipes to supply

the city, was held to preclude those whose rights to the water or its beneficial use were impaired from claiming damages by action, as they were shut up to a special remedy provided by statute; but an overflow of lands by reason of the dams was held not to be authorized by the statute, and for that action would lie.

The right of a riparian owner to sell water for the irrigation of nonriparian lands is denied in Watkins Land Co. *v.* Clements (Tex.) 70 L. R. A. 964.

The doctrine of prior appropriation of water for irrigation purposes is held, in Clark *v.* Allaman (Kan.) 70 L. R. A. 971, not to have existed in Kansas prior to the statute of 1886, expressly conferring such right.

New Books.

"International Law." (F. H. Thomas Law Book Co. St. Louis. Mo.) By Edwin Maxey. 1 vol. $6.

"Rules of the Supreme Court of the United States." Official ed. (John Byrne & Co., Washington, D. C.) Pamphlet, 50 cts.

Brice's "Bar Examination Questions and Answers." (New York.) (Matthew Bender & Co., Albany, N. Y.) 2d ed. $2.50 net.

Disbrow's "Digest of the Code of Civil Procedure." (New York.) (Matthew Bender.) 2d ed. $1.50.

"Cases on International Law." By James B. Scott. (West Pub. Co., St. Paul, Minn.) Cloth, $3.50.

"Kansas General Statutes, 1905." Annotated. Including, vol. 69 Kansas Reports, and vol. 10 Kansas Appeals Reports. By C. F. W. Dassler. (Crane & Co., Topeka, Kan.) Buckram, $6.

"A Treatise in Latin." With legal maxims and phrases. 2d ed. By E. Hilton Jackson. (John Byrne & Co., Washington. D. C.) Sheep, $2. Buckram, $1.50

"The Standard Fire Policy." (Rough Notes Co., Indianapolis, Ind.) By Guilford A. Deitch. $1.

Wolff's "Law of Insurance Agency." A digest of important decisions affecting fire insurance agents and agency. (Rough Notes Co.) $3.

"Digest of Statute Law of Pennsylvania." From 1700 to 1903. By J. Purdon. 13th ed. by Ardemus Stewart. (G. T. Bisel & Co., Philadelphia, Pa.) Vol. 2. (E to L) $6.

"A History of Taxation in Ohio." (Robert Clarke Co., Cincinnati, Ohio.) By Nelson W. Evans. $1.50.

"Digest of the Reports and Session Laws of New York for 1905." Being the annual of the monthly digest, revised and rearranged. (J. B. Lyon & Co. Albany, N. Y.) $4.50.

Monaghan's "Cumulative Annual Digest of Pennsylvania Decisons." (Soney & Sage, Newark, N. J.) For the year 1905. $6.

"Questions and Answers on Insurance." (John Byrne & Co., Washington, D. C.) By E. R. Shipp. 50 cts.

"Notaries' and Commissioners' Manual." (New York) 8th ed. By W. L. Snyder. (Baker, Voorhis & Co., New York.) Cloth, $1.75. Paper, $1.50.

"The Law Relating to Auditors and Masters in Massachusetts." (Little, Brown & Co., Boston, Mass.) By J. L. Doherty. $1.25 net.

"A Digest of all Decisions of the Courts of Ohio from 1802 to 1905." Including all cases decided in the courts of the United States affecting or relating to Ohio law. (The Laning Co., Norwalk, Ohio.) Vol. 3. $7.50

Recent Articles in Law Journals and Reviews.

"Treaties as Sources of International Law."—11 Virginia Law Register, 863.

"Right of Assignee of a Judgment to Sue Officer for Breach of Duty in Regard Thereto, Occurring before Assignment."—11 Virginia Law Register, 867.

"The New Replevin in Pennsylvania."—54 American Law Register, 123.

"The Liability of Corporation Promoters to Account for Profits (Concluded)."—54 American Law Register, 163.

"Jurisdiction of the Courts of One State over an Act of Bigamy Committed in Another State—the Collins Case."—62 Central Law Journal, 216.

"The Criminal Liability of an Incitor or Abettor of Suicide."—1 Madras Law Times, 31.

"The Chaotic Condition of the Opinions of the Courts Relative to the Questions as to the Degrees of Negligence."—62 Central Law Journal, 141.

"Is There an Unwritten Constitution in the United States?—Are Acts of the Legislature Void because Violative of Common Right?"—62 Central Law Journal, 144.

"Railroad Commissions, State and Federal."—62 Central Law Journal, 199.

"The Evasion of State Laws by Mail Order Insurance Companies."—38 Chicago Legal News, 247.

The Humorous Side.

A STOLEN WIFE.— A western paper publishes the following complaint in a criminal case. After the formal parts of the complaint, it recites that the complainant on oath charges "that one, John Doe, did commit grand larceny with fraud and stealth, and, with intent to defraud another thereof, did steal and carry away divers goods and chattels, *viz.:* Mrs. Maria Johnson and children, also one team and harness and wagon and household goods to the value of $225 against the form and dignity of the statutes in such case made and provided."

A CRUEL SUGGESTION.—A Buffalo paper reporting that certain physicians in the eastern part of the state proposed to publish the names of all persons who did not pay their doctor's bills, makes as a counter suggestion the proposition to publish the names of all persons whom the doctors failed to cure.

LAWYER'S CARD ILLUMINATED.—A journal published in the Northwest contains a lawyer's advertisement filling a space of about 5 inches by 8, advertising consultation on all points, specifying laws of husband and wife and various other subjects, while most of the space is filled by a cut showing a fierce battle between a man and woman, each fiercely pulling the other's hair. Under it in large type it says: "Had this couple read the above ad. in the classified columns of the ———— they could have settled their trouble more satisfactorily."

LAW BUSINESS IN HAWAII.—A letter from a long-named place in Hawaii, by a person signing himself as attorney, and mildly suggesting that he will take steps to collect a certain claim if not promptly paid, has the following card in the upper left-hand corner: "———— ———— ———— general merchant, notary public, post master, Hawaiian coffee a specialty, lumber, lime, and cement, wholesale dealer in wines, liquors, and beer, proprietor North Hilo Soda Works, agent Norwich Union Fire Ins. Co., Hawaiian Trust Company."

A UNIQUE VERDICT.—An Illinois correspondent sends us the following item on the authority of an old and reputable citizen of that state, who vouches for the truth of the story: In an action of trespass, many years ago, it appeared that the defendant, while building a fence along the boundary line of his land, casually stepped on the land of his neighbor, who thereupon brought against him the action of trespass *quare clausum fregit*. The defendant's lawyer by humorous and droll methods of defense, got the jury to render the following verdict: We, the jury, find the defendant technically in law guilty, but we assess the plaintiff's damages at one pewter button. The correspondent adds that the defendant's attorney became a "pre-eminent President of the United States."

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